7-140

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 525.

THE UNITED STATES, APPELLANTS,

vs.

J. A. BONNAFON.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 14, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 525.

THE UNITED STATES, APPELLANTS,

vs.

J. A. BONNAFON.

APPEAL FROM THE COURT OF CLAIMS.

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1 *Petition.—Filed June* 13, 1871.—*J. R.*

U. S. Court of Claims. December term, 1871.

J. A. BONNAFON
vs.
THE UNITED STATES. } No. 6356.

To the honorable Court of Claims:

The petition of J. A. Bonnafon, residing in the city of New Orleans, Louisiana, a citizen of the United States, with respect showeth:

That in the month of June, 1865, in the city of New Orleans, he engaged in a transaction in cotton, under authority of an act of Congress of July 2d, 1364.

Petitioner avers that by the 8th section of said act of Congress of July 2d, 1864, it was enacted that it should be lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any produce of States declared in insurrection, at such places as should be designated therein and at such prices as should be agreed on with the seller, not exceeding the market-value thereof at the place of delivery, nor exceeding three-fourths of the market-value thereof in the city of New York at the latest quotations known to the agent purchasing; and under the authority of this act and in accordance therewith, the Secretary of the Treasury, on the 24th day of September, 1864, with the approval of the President, of the same date, issued general regulations for the purchase of products of the insurrectionary States on government account, and on the 9th of May, 1865, certain amended regulations relating to the same object.

Your petitioner shows that, in pursuance of said regulations, he sold to the United States and repurchased through O. N. Cutler, the purchasing-agent of the United States, on 23d day of June, 1865, sixty-two bales of cotton of the class of "ordinary" cotton, weighing 24,910 pounds, and abandoned to the said purchasing-agent, O. N. Cutler, for the use of the United States, one-fourth of said lot of sixty-two bales of cotton, to wit, fifteen bales of cotton.

Your petitioner shows that the surrender and payment by him of said fifteen bales of cotton was illegally exacted of him and made by him in error, because, before said payment was made, to wit, on the 13th of June, 1865, the President of the United States had annulled and
2 removed all restrictions on trade east of the Mississippi River, as by law he had a right to do, and that thereby the said 8th section of the act of July 2d, 1864, became inoperative, and was repealed as regards the city of New Orleans, which lies east of the Mississippi River.

Your petitioner further represents, that he is advised and believes that the said O. N. Cutler, the aforesaid purchasing-agent of the United States, regularly rendered his accounts to the Treasury Department, and under the direction of said government shipped said fifteen bales to the government agent at New York, through whom it was regularly sold, and that the proceeds thereof were paid over into the Treasury of the United States.

And whereas, from the premises it appears that the Treasury of the United States has thus erroneously and illegally received the proceeds of said fifteen bales of cotton, an implied obligation arises on the part of the United States to refund to your petitioner the said proceeds of said bales of cotton.

Wherefore your petitioner submits and prays that a decree may be rendered, declaring that he is entitled to recover from the government the proceeds of said fifteen bales of cotton, the amount of which can only be ascertained by the accounts of the Treasury Department.

Your petitioner further avers that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government, as appears in his subjoined affidavit, which he prays may be taken as a part of this petition.

LOUIS JANIN & SONS,
HUGHES, DENVER, & PECK,
Solicitors for Claimant, Washington, D. C.

Address of Claimant: New Orleans, La.

J. A. Bonnafon, being duly sworn, deposes that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government; that no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof, or any interest therein, has been made, except as in the said petition stated; that the affiant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

J. A. BONNAFON.

Sworn to and subscribed before me this 16th day of February, 1869.
[SEAL.] D. AUGUSTIN,
U. S. Commissioner for the Dist. of La.

3 In the Court of Claims of the United States. December term, A. D. 1870.

J. A. BONNAFON *vs.* THE UNITED STATES. } No. 6356.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimant herein; and, not confessing the same or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And, as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of the proceeds of fifteen bales of cotton, says that they are not indebted to the said claimant in the said sum of money nor any part thereof.

And, as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, denies the said allegation.

THOMAS H. TALBOT,
Assistant Attorney-General.

Filed August 11, 1871.

4 In the Court of Claims.

J. A. BONNAFON *vs.* THE UNITED STATES. } No. 6356.

At a Court of Claims held at the Capitol, in the city of Washington, the 17th day of April, A. D. 1876, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said J. A. Bonnafon, claimant, do have and recover of and from the United States the sum of two thousand and sixty-six dollars and ten cents ($2.066\frac{10}{100}$).

By the court.

A true copy of record.

5 In the Court of Claims of the United States. Dec. term, 1875.

J. A. BONNAFON
vs.
THE UNITED STATES. } No. 6356.

From the judgment rendered in the above-entitled cause on the 17th April, 1876, in favor of claimant, the defendants, by their Attorney-General, on the 14 day of July, 1876, made application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Ass't Attorney-General.

Filed July 15, 1876.

AT CHAMBERS.

Allowed.

C. D. DRAKE, *C. J.*

6 Court of Claims.

J. A. BONNAFON
vs.
THE UNITED STATES. } No.

Findings of fact.

This case having been heard before the Court of Claims, the court upon the evidence, finds the facts to be as follows:

That on the 27th June, 1865, the petitioner, at New Orleans, in the State of Louisiana, under the act of July 2, 1864, & Treasury regulations made in pursuance thereof, & dated May 9, 1865, sold to O. N. Cutler,

7 purchasing-agent of the Treasury at New Orleans, 62 bales of upland cotton brought into New Orleans from States in insurrection. And on the 27 June, 1865, the said Cutler, as agent as aforesaid, resold to the petitioner 47 bales of said cotton, leaving in the possession of the United States 15 bales of said sixty-two bales. That said fifteen bales of cotton were sold by the United States, & the net proceeds thereof, amounting to the sum of $2,066.10, were paid into the Treasury.

That at the time of the sale & resale of said cotton above stated, the petitioner & said O. N. Cutler had no knowledge of the proclamation of the President dated June 24th, 1865.

And the court find that the petitioner is entitled to recover of the United States $2,066.10, & judgment is rendered therefore.

8 And upon the foregoing findings of fact the Court of Claims decides as

Conclusions of law.

The Treasury agent in New Orleans having control and possession of the claimant's cotton brought in from the insurrectionary districts, had no authority on the 27th June, 1865, to retain the same, or one-fourth thereof, nor to exact from the owner a payment equivalent to one-fourth

of its value under the act 2d July, 1864 (13 Stat. L., p. 375), and the owner should recover back the payment so exacted, it having been paid over to the defendants and being now in the Treasury.

By the court.

Filed March 20, 1876.

9 In the Court of Claims.

J. A. BONNAFON
vs.
THE UNITED STATES. } No. 6356.

The claimant requests the court to find the following additional facts:

I. That during the enforcement of said regulations no cotton subject thereto was allowed to be shipped to New Orleans except such as was consigned to the said Cutler, purchasing-agent of the United States.

E. & A. C. JANIN,
Attorneys of Claimant.

Upon the foregoing request the court makes the following order, to wit:

Allowed.

Filed March 23, 1876.

10 In the Court of Claims.

J. A. BONNAFON
vs.
THE UNITED STATES. } 6356.

The Attorney-General, on behalf of the United States, requests the court to find the following additional facts:

I. The sixty-two (62) bales of cotton reached New Orleans by the steamer Iberville on the 21st day of June, 1865.

II. The marks upon them were various.

III. The 47 bales were returned free from all fees and internal-revenue taxes.

THOMAS SIMONS,
Assistant Attorney-General.

Filed March 23, 1876.

11 Upon the foregoing request the court makes the following order, to wit:

Allowed.

Filed March 23, 1876.

12 In the Court of Claims.

J. A. BONNAFON
vs.
THE UNITED STATES. } No. 6356.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the

application of the Attorney-General for the defendants for the allowance of an appeal, as filed in the clerk's office July 15, 1876, and of the order of the chief justice of said court allowing the same, of the findings of fact by the court, and conclusion of law thereon, of the requests of claimant and defendants for additional findings of fact, and the rulings of the court thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this ninth day of October, A. D. 1876.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 525. The United States, appellants, vs. J. A. Bonnafon. Court of Claims. Filed 14th October, 1876.